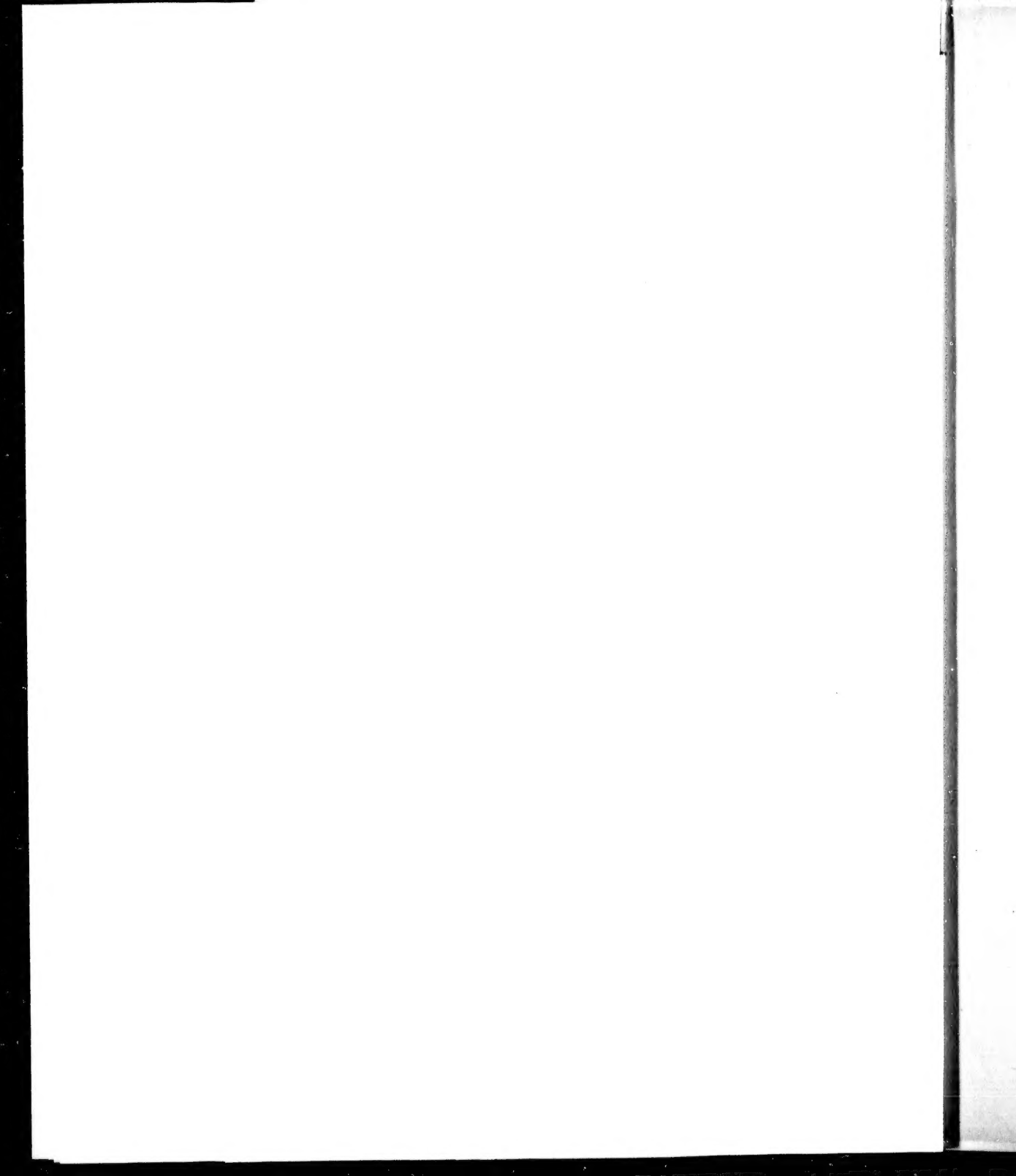




THE CASE OF
ARTHUR ERNEST HATHEWAY,
A BRITISH SUBJECT,

WHO, INDUCED BY THE PROMISES OF QUICK PROFITS IN THE WEST, SETTLED AT
Big Horn City, Wyoming Territory, U. S.

OCTOBER 6, 1884,

AND AFTER MORE THAN FOUR MONTHS CONTINUOUS RESIDENCE THERE, BEING WHOLLY INNO-
CENT OF ANY OFFENCE AGAINST THE LAW, WAS, ON FEB. 20, 1885, AT NIGHTFALL,

ARRESTED BY UNITED STATES SOLDIERS,

MANACLED AND SHACKLED, CHARGED WITH BEING A **DESERTER** AND **HORSE-THIEF**,
CARRIED AWAY FROM HIS HOME AND BUSINESS, AND

Unjustly Imprisoned at Fort McKinney,

FOR A WHOLE MONTH, AND PART OF THE TIME IN **SOLITARY CONFINEMENT**, AND SUB-
JECTED TO MANY INDIGNITIES AND GREAT HARDSHIPS AND IN PERIL OF HIS
LIFE, AFTER WHICH HE WAS TRIED BY COURT MARTIAL AND

HONORABLY ACQUITTED.

I, Arthur Ernest Hatheway, late of St. John, in the Province of New Brunswick, and of Dedham, in the County of Norfolk and the Commonwealth of Massachusetts, do upon my Oath depose and say that on the 20th day of February, A. D. 1885, I was residing at Big Horn City, in the County of Johnson and Territory of Wyoming; between the hours of 6½ and 7½ o'clock P. M., February 20th, while in a public room of the Oriental Hotel, at said Big Horn, I was arrested by Sergeant Kitchen and Scout Gerard, and two guards armed with carbines were set to guard me, with orders to shoot me if I made the least attempt to escape. They produced no warrants and I was given to understand that I was arrested by the orders of one Col. Charles C. Compton, the Post Commandant at Fort McKinney, and that I was a deserter from the United States Army, named Heath, and a horse-thief, having stolen an officer's horse, and a carbine and some clothes. This report, although I stoutly denied it, and asserted my innocence, and that I never knew or heard of Heath, and that my name was and always had been Hatheway, and that I was a British subject, was made public, and the following article was printed and circulated the next morning in the Big Horn *Sentinel* of February 21st, 1885:

"A GRAVE CHARGE.--Friday night, Deputy Marshal Frank Gerard, of Fort McKinney, arrived in town, accompanied by two soldiers, and two others from the Post. A few minutes after his arrival, A. E. Hatheway was arrested, on the double charge of desertion from the United States Army, and of stealing a Government horse or horses some time ago. As soon as his arrest was accomplished, he was placed under guard, and was to-day taken away. A. E. Hatheway, or Ernest Heath, his alleged army name, was interviewed by a *Sentinel* man, and he seemed confident of establishing his innocence, claiming a case of mistaken identity. If, as he asserts, he be innocent of the charges preferred, he will have an opportunity to clear himself in a few weeks at most. But in all candor, Albert Ernest Hatheway, we are afraid that you are in an extremely bad hole."

This arrest was made on Friday evening. I have been informed since that Scout Gerard is not a Deputy United States Marshal. Privates Nash and House, Company I, Fifth U. S. Cavalry, were ordered to guard me all night, with orders as above stated. At about 9 o'clock in the evening, I was handcuffed and allowed to lie down on a sofa. I could sleep but little, and an armed guard stood over me all that night, as if I were a desperado and a hardened criminal. On Saturday I was detained at the Oriental Hotel and in Big Horn City all day, attended constantly by an armed guard. On Saturday night I was again allowed to sleep on the sofa, and the shackles were placed on my ankles. On Sunday morning the shackles were removed from my ankles, and I was placed in a Government ambulance and between guards, and driven over the public stage road to a ranch on Piney Creek, where lodgers stop, and owned by a Mr. Myers. I had dinner and supper here and was put to sleep in an out-house, and all the time I was under an armed guard. On Monday the 23d, I was brought to Fort McKinney, via Buffalo, arriving there at 3 o'clock P. M., when I was turned over at once to the Sergeant of the guard and by him I was placed in the guard-house, and locked in the cell marked cell "A," on the plan hereto attached and made a part of this statement. In about one-half an hour, Captain Forbush, the Officer of the Day, as I am informed, had me taken from said cell "A," and put into the Sergeant-of-the-guard's room, when in the presence of the Sergeant of the guard, I was ordered to undress, which I did under protest, and my clothing was subjected to a rigid examination, even my socks.

All my private papers, letters, money, and every article in my pockets, except a tooth-brush, were taken from me. I had eleven dollars in my pockets. I was then taken back into cell "A," where I was kept until about 5 P. M. I was then placed in the ranks and compelled to stand up with the other prisoners, and a roll-call was made. The name of A. J. Heath was called three times, and I was ordered to answer. I would not do so. I said "I am not Heath, but Hatheway, and I will not answer to any other name but Hatheway." Captain Forbush then said "That man in civilian's clothes, step out," and as I was the only man present in civilian's clothes, I stepped forward, and I was again taken into the room of the Sergeant of the guard, and an official looking document was presented to me to sign. Upon looking at it, I found these words written on it, as near as I can remember: "Q. M. Department, Fort McKinney, Wyoming A. J. Heath, Private, Company K, Fifth Cavalry, four Blankets." I told Captain Forbush I could not sign that paper, as my name was not Heath. I was again directed to sign the paper, by the name of Heath, and I again refused. Captain Forbush said "You may either sign that paper, or freeze; you will not get any blankets until you sign the name of Heath." Captain Forbush then ordered me to be placed in solitary confinement. I have since been informed that this was done under order of Colonel Charles C. Compton, the Commandant at Fort McKinney, Wyoming and to extort from me, by harsh treatment, confessions to be used against me on my trial before the court martial. I was

then taken into cell "B," and locked up. This cell is about three and a half feet wide, and about eight feet long, with a stone floor; the sides and door were of wood, interlaced with strong iron bars. There was no opening anywhere, for light and ventilation, except in the roof, which was of interlaced iron. The door was solid, and the cell devoid of furniture. This cell was damp and cold, and so dark that I could not see to eat. I had no bedding, except a small bed sack to lie on, and my over coat to cover me. It was a very cold night, and I could not sleep, by reason of the cold and dampness. I had bedding offered to me subsequently by outside friends, and I offered to buy blankets myself, but it was refused, and I remained without bedding until March 1st, 1885. In the morning I was stiff and chilled through, and fearing that the cold and damp cell would soon destroy my constitution, if it did not kill me, I asked to see Colonel Compton, the Post Commandant. I was then taken to his headquarters, where I had an interview with Colonel Compton, and in this interview Lieutenant Swift, Post Adjutant, was present most of the time.

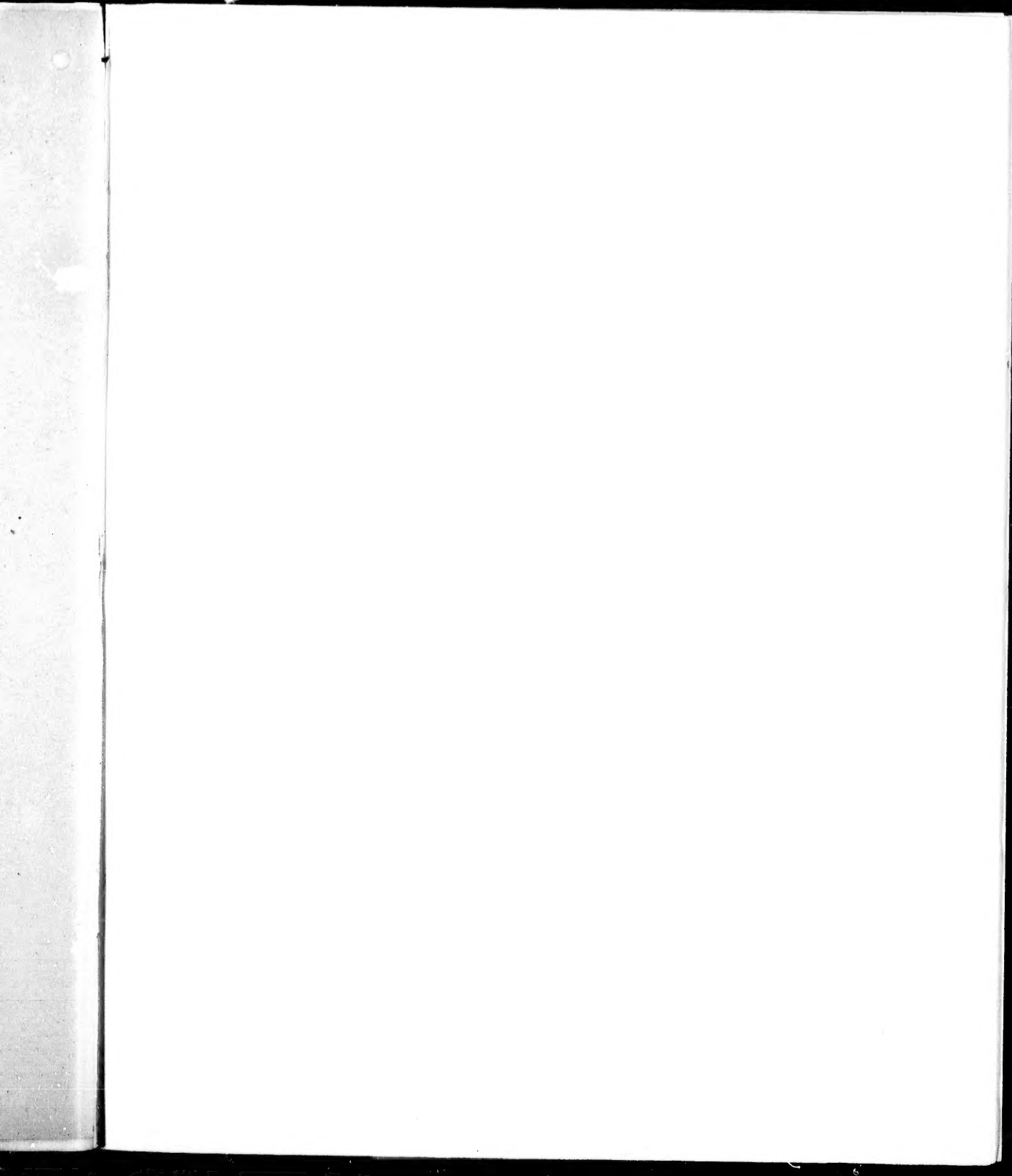
Colonel Compton asked me "what was the use of this devil-may-care air and that look of injured innocence," and that I had "better confess that I was A. J. Heath." I said, "Colonel Compton, if you were an innocent man, would you not do as I am doing?" He said, "Certainly." I said, "Colonel Compton, I am an innocent man; my name is Hatheway, and I am a British subject, and I am going to keep doing just what I have done." I also told Colonel Compton my whole history, as to my whereabouts for several years, and gave him the names of parties who would substantiate my story. Lieutenant Swift told Colonel Compton that he believed that I was the man they wanted; he would not make a positive statement then, and did not do so when called as a witness at my trial. They then called in Trumpeter Vance, who said I resembled Heath a little, but did not think I was the man,—could not say one way or the other, positively. Another soldier, a Sergeant, was called in, and he said positively that I was not the man Heath. Sergeant Kitchen, who had arrested me in Big Horn City, was then called in, and he said he thought I was A. J. Heath, the younger and taller of the Heaths. I was then taken down to one of the quarters, to a sick man, a soldier, who said he thought I was the older and shorter of the Heaths. I was then taken back to Colonel Compton's office, and I requested to be placed in a dryer cell. I was then taken to the guard-house, and placed in cell "A," with a convict by the name of Hughes; I was kept here confined, and with orders not to allow me to stay in the main building, where the stove was, nor to approach the stove to warm—a privilege that was allowed all other prisoners. The guard-house was built, as I am informed, in December, 1884, and I am told by the soldiers, that I was the first man who had ever been placed in cell "B." During my confinement, there was only one other man placed in cell "B," and he was fighting-drunk and well supplied with blankets. I was only allowed a pencil to write with, and could write no letters, unless they were inspected by the Officer of the Day; all my letters were opened and read by the Officer of the Day. I was not allowed to go out of my cell, except to go to the rear, and then under the charge of a non-commissioned officer, a Sergeant or Corporal. Thus I was kept until the 26th day of February, 1885, at which date Lieutenant Paddock, at guard mount and about 9 o'clock A. M., had me called out, and I was shown a photograph of two men on one card, one dressed in a soldier's suit, and one in a buck skin suit. Lieutenant Paddock asked me, "who is that man you were taken with?" I said I "was never taken in a suit like that; that is not my picture." He asked me these questions three times. There were present Dr. Terrii, Post Surgeon, Colonel Compton, Post Commandant, and two other commissioned officers, whose names I do not know. Lieutenant Paddock and Surgeon Terrii were both members of the court martial, and on the 21st day of March, this same Lieutenant Paddock used insulting and threatening language towards me in the presence of the court martial, under the following circumstances:

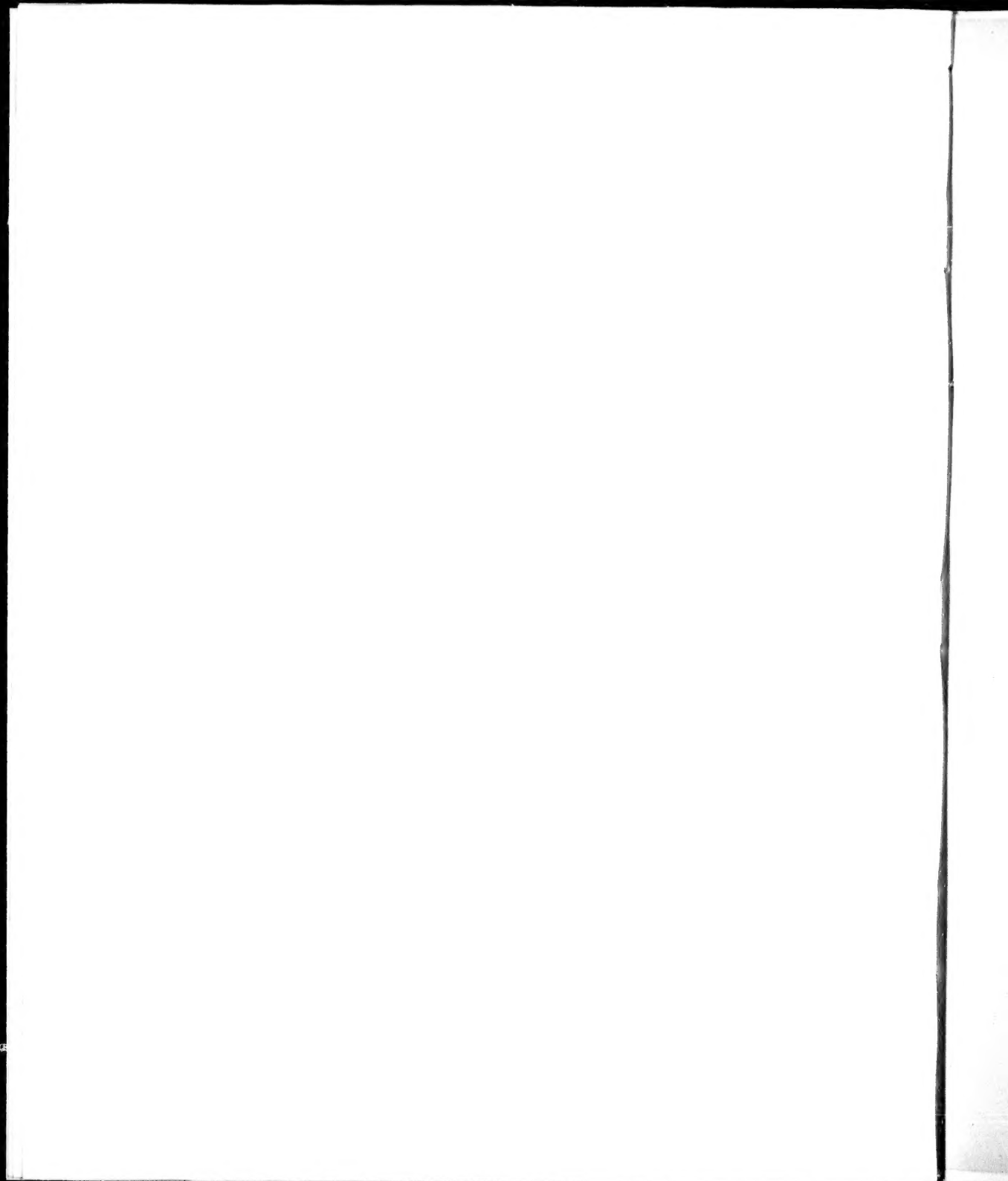
A Saddler of Fort Niobrara, Nebraska, who had served with A. J. Heath, in the army, and had made boots for said Heath, testified that A. J. Heath had a bunion and a scar on the big toe joint of his left foot, and requested permission to examine my left foot. I removed my left boot and sock, and the Saddler examined my foot, and so did Lieutenant Paddock. I then put on my sock and boot, and the Saddler said he did not find the bunion and scar, and Lieutenant Paddock said he thought he had detected a scar. I again removed my boot and sock and Lieutenant Paddock looked closely, but did not say whether he saw a scar or not; so I said to Lieutenant Paddock, "Are you satisfied," and he replied in a threatening and insulting manner, "Don't give me none of your lip," and immediately made a motion that I be confined in the guard-house, until I could learn to be respectful, and asked that the court be cleared. I replied that I meant no disrespect to the court, and was willing to have my foot examined by the whole court. The business of the court then proceeded, and no notice was taken further of Lieutenant Paddock's motion and request.

I was allowed no intercourse with friends and acquaintances, except a short interview on February 26th, with Charles H. Burritt, of Buffalo, Wyoming, my counsel. I was kept in cell "A," until March 1st, 1885. On March 1st, 1885, I was feeling very sick; the food was very coarse, consisting of brown bread and coffee, slum-gullion and coffee, or meat pie, and poorly cooked, and I was beginning to suffer severely from indigestion. I asked to see Colonel Compton, and my request was granted, and I was taken to Colonel Compton's office. On Tuesday, February 24, I had asked Colonel Compton to allow me to buy blankets; that I had money enough to buy them, and he told me that I could not purchase any, or have any but what the Government chose to give me, and I must either sign the name of Heath, or Hatheway *alias* Heath, before I could get what the Government would issue to Heath. I told him on March 1st, 1885, and it was true, that I was getting sick, from the want of exercise and bedding, and must be allowed to leave my cell, for a little exercise, which, as I looked sick and pale, was granted me, one hour twice a day, walking with the sentry on the stoop, in front of the guard-house, morning and night.

On Sunday, March 1st, 1885, while I was out walking on the stoop with the sentry, Trumpeter Warren was sent to look at me, and I am informed that he went to Colonel Compton's, and told Colonel Compton that I was not the man Heath, and offered to take his oath to that effect, then and there. The Colonel then came down to the guard-house, and I was taken into the room of the Sergeant of the guard, and was told I had the liberty of the guard-house; that I should sleep and eat my meals in the room of the Sergeant of the guard, and I was in honor bound not to break that parole—which I never did.

While in cell "A," Lieutenant Bellenger, Judge Advocate, came to the guard-house, in company with Blacksmith Lunn, of Troop L, Fifth U. S. Cavalry, and Lunn told Lieutenant Bellenger that I was not Heath, and he was positive of it. Lieutenant Bellenger, as Judge Advocate, closed his case subsequently, without calling Trumpeter Warren and Blacksmith Lunn—although knowing that Warren and Lunn had both been in the same garrison with Heath, the deserter, and had known Heath well. On March 10th, 1885, there being no facilities in the guard-house for washing, I asked the Sergeant of the guard to see the Officer of the Day, and find out if I could go and take a bath at some of the quarters. Captain Stone, whose treatment of me was uniformly courteous and gentlemanly, told the Sergeant of the guard that I was paroled for the garrison, until further orders; also told him to send me to Sergeant Cavill, Troop L, Fifth Cavalry, who would give me the necessaries that I required, and Sergeant Cavill did so. I was paroled until March 18th, when Colonel Compton called me over and took me to the hospital, and called the Steward and said, "Steward, Mr. Hatheway will occupy the bed near the window, and will eat his meals here; his first meal will be dinner." I went over to Lieutenant Bellenger, Officer of the Day, and reported these facts to him, and especially asked him to see the Colonel, that there might be no mistakes. That night, about 9.30 o'clock, I was in bed in the hospital, when the Sergeant of the guard came and woke me up, and told me to get up and dress, and that he had orders from Lieutenant Bellenger, that I should sleep in the guard-house. He was armed with a carbine. He put me in the guard-house. I was told to take my bed and old bedding and carry them into cell "A," and was locked in there all night. The next morning, March 19th, I asked the Sergeant of the guard if I was confined to the guard-house. He said he had no orders to that effect, only to keep me in the cell all night. At about 9.30 A. M., I reported this to Colonel Compton, at his office, and asked him if my parole was broken, and why I was confined, when I had obeyed his orders. Colonel Compton said in the presence of Lieutenants Andrews and Bellenger, that I was under his order, and his alone, and that I had done right in going to the hospital, and that I was ordered by him to sleep there, and that my parole was not broken. I staid there until March 21st, 1885, and on that day, at 12.30 P. M., my parole was taken from me, by the order of the court, I suppose. I was ordered to be confined in the guard-house, and I was put in the Sergeant's room, and everything taken out but the stove and my bedding. I was locked in that night. On Sunday morning, March the 22d, my breakfast was brought to me from the hospital. At 11 A. M., I was given the parole of the guard-house, inside, and I was to eat my meals at the hospital, unattended. That evening I was paroled, and ordered to sleep in the hospital. Monday, A. M., I was to stay in the guard house in the day time, and eat and sleep in the hospital, unattended. In the afternoon, between 2 and 4, I went to Colonel Compton's, as I thought there was some mistake about the order, and he gave me the limits of the garrison. About an hour afterwards, Colonel Compton said that I was at liberty to leave Fort McKinney, and since which time I have not been molested; I was given to understand that I had been honorably acquitted. I notified Colonel Compton that I chose to remain until the result of the court martial was approved, and made public, in orders. I have not yet received official notice of my acquittal.





On the last day but one of my trial, I was confronted by Sergeant Schreiber, of Company K, Fifth U. S. Cavalry, said to be stationed at Fort Niobrara, in the State of Nebraska. Before Sergeant Schreiber came in, and before I had seen him, Lieutenant Bellenger produced a soldier's gloves, blouse and cap, for me to put on. Of course I refused to put them on, and an effort was made to have me taken to the guard-house, and have the soldier clothes put on me by force. The court was cleared, and upon being re-opened, it was announced that I was to remain in my civilian's suit. I assert, positively, that never in my life, have I seen or known this man, Sergeant Schreiber, before I saw him as a witness in the court martial, and upon cross-examination, I learned that Sergeant Schreiber, who had arrived the night before, had been taken to the private room of Lieutenant Bellenger, the Judge Advocate; had been shown there the picture of the alleged deserter, Heath, and also my picture, and had talked with Lieutenant Bellenger, about what testimony he could give, and this Sergeant Schreiber was the only witness, who swore positively, that I was A. J. Heath, the deserter. There were many men in the garrison, at Fort McKinney, who served with a A. J. Heath, the deserter, and particularly Trumpeter Warren, Blacksmith Lunn, and Corporal Rheimer, who knew A. J. Heath, and several men beside, who said at once, upon seeing me, that I was not Heath, and the Judge Advocate called none of these men to identify me before the court, but sent all the way to Fort Niobrara, for this Sergeant Schreiber. Upon Schreiber's arrival—he being a non-commissioned officer—was taken to the private rooms of a commissioned officer, and his testimony talked over with the Judge Advocate, and upon my counsel asking the question which called out the above facts, the Judge Advocate endeavored to conceal them, by making objections, and saying that it was an insinuation that the testimony of Sergeant Schreiber had been fixed up, or words to that effect. The following article appeared in the *Big Horn Sentinel*, of February 28th, 1885:—

“Frank Gerard was up from the Post, Thursday, procuring evidence in the Hatheway case. “We believe that he failed to get statements of the case from parties examined here, and consequently served no summons.”

I have further information, that the witnesses referred to were subsequently subpoenaed, sworn and examined, confessedly to exonerate Col. Charles C. Compton, for having caused my arrest. The witnesses being the ones referred to in the following article from the *Big Horn Sentinel*, of March the 7th, 1885:

“Henry Love, C. A. Johnson, Chas. Sawyer, J. H. Rice and Nelson are at Fort McKinney to testify against A. E. Hatheway, who is under arrest, charged with desertion from the Army, and horse-stealing. It is understood here that they are spending a part of their time in the guard house.”

The man Nelson is James Nelson and himself a deserter, as I am informed, and J. H. Rice is an ex-soldier, discharged by reason of disability, as I am informed; and both Nelson and Rice testified that they had known Alfred J. Heath, the deserter. Rice, who had no interest, testified positively that I was not Heath, and Nelson, having dictated the letters upon which Col. Compton ordered my arrest, was of course an interested party, and Nelson would only say that I resembled Heath. The reputation of all of these parties in the vicinity they reside in, as I am informed and believe, is bad, and the man Nelson, under cross-examination, testified that the letters were written to scare me out of the country, and not in furtherance of Justice, and from the actions of myself, he (Nelson) did not believe I was Heath. My name is Arthur Ernest Hatheway, a British subject. I was born June the 7th, 1863, in St. John, New Brunswick, and am the youngest of a large family, of whom seven are now living. My father, Thomas Hatheway, died December 12th, 1871. I resided at St. John, N. B., until the latter part of 1877, when my mother removed to Islington, in Dedham, Norfolk County, Massachusetts. I remained with her in said Dedham, continuously until the fall of 1880, when I went to Halifax, N. S., but returned immediately. In November, 1881, I went to Missoula, Montana, and remained there until October, 1882. In August, 1883, I went to Rock Creek, Wyoming, and returned about February, 1884. In the summer of 1884 I raised some money on my St. John property, and in September, 1884, I started for Wyoming. I finally decided to settle in Big Horn City, where I bought land and contracted for the erection of a store building and caused the same to be built and dug the cellar thereof, and made contracts with parties to furnish goods to be sold therein. I never naturalized as a United States citizen, nor offered to. My residence in the United States was wholly accidental: first, owing to my mother's health, who thought the climate of Dedham was favorable to her bronchial trouble, and then the embarrassed condition of my father's estate led to a longer stay, pending the settlement of the estate. I am a British subject, owning property in St. John, N. B., and I am a voter there. I was led to Wyoming by the inducements offered to settlers and by the advertisements of railroad companies and

others, stimulating settlements on lands there, and offering quick profits. I consider that I have been seriously damaged in my health, and my nervous system has been injured. I never was in a prison before to see how it looked, even, and I was much affected by my lonely condition and ill treatment. I knew the punishment for desertion was severe and was told by parties at the Post that I would certainly be convicted, and would get at least ten years in the penitentiary if I did not confess that I was A. J. Heath, the deserter. I was subjected to many indignities and rough language from the officers. On one occasion, Col. Charles C. Compton, the Post commandant said to me in a sarcastic and insulting tone, in order, as I now believe, to frighten me into making some confession, — "What is the use of your devil-may-care air and that look of injured innocence?" The food was very poor and coarse, and I have suffered ever since with indigestion, and my nerves are now very much affected. In my dreams I am troubled with the thoughts of my imprisonment and will awaken with the idea uppermost in my mind that I am in solitary confinement and convicted of desertion. The imprisonment and detention at Fort McKinney continued for a month, during which time parties in Big Horn City, as I am informed, broke or entered my building and removed a stove and half a dozen chairs, and my counsel informed me that a constable, one James Glasgow, had a notice of sale of such property posted in the Buffalo P. O. I am certain no process ever was served on me, and my counsel, after investigating the matter, informed me that the constable's notice had been removed and he was advised that the property illegally seized had been returned. My property in Big Horn City has been entirely lost by reason of my imprisonment and detention, and I have been compelled to turn it over to my creditors, and I am left dependent entirely upon my friends in the East, as my reputation and credit in this country have been ruined by my arrest and trial and the infamous charges brought against me, one being horse-stealing, which is looked upon in this section as almost equal to murder. I have been compelled to employ counsel in Buffalo at an expense of two hundred and fifty dollars, and also counsel in Boston, whose bill of charges has not yet been received by me, but will no doubt be as much more. I have been obliged to expend large amounts of money for telegrams and the expense of livery horses in bringing counsel from Buffalo to Fort McKinney to attend my trial, and I have had to borrow money for my support until I can close up my business affairs here, and the total amount of actual damages and loss of money will keep me paying interest for many years, unless I should meet with some unexpected good fortune in money affairs. And further deponent saith not.

ARTHUR ERNEST HATHEWAY.

The original statement, setting forth the foregoing facts, made by Arthur Ernest Hatheway in the presence of a witness, and sworn to by him before Charles H. Burritt, Esq., Notary Public, Buffalo, Johnson County, Wyoming, is in my possession.

SIMON W. HATHEWAY, ATT'Y,

34 School Street, Boston, Mass.

In addition to the statements in the foregoing affidavit, the following are submitted:

1st. I settled at Big Horn City, Wyoming, October 6, 1884, arriving there via Sheridan, Wyoming, direct from Dedham, Mass. I bought land at Big Horn about October 7, 1884, from the Big Horn Township Company. October 13, I contracted with J. W. Howard to build store on my land. About the same time, I contracted with F. Taft to plaster my building. My building cost me six hundred dollars.

2d. Big Horn City is a quiet town, settled chiefly by ranchers, unusually free from disorderly persons and cowboys. Its citizens are orderly and of good character.

3d. I had been publicly residing and doing business in Big Horn City continuously for the four months and a half immediately preceding my arrest, and *within thirty miles of Fort McKinney*; and I was known to, and had dealings with, such reputable persons as Sackett & Skinner, Lon Knight, Fay Somers, E. H. Beecker, James Glasgow, J. W. Custer & Co. and J. W. Austin, — all of said Big Horn; J. H. Conrad & Co. and McCray and Buel, of Buffalo; and M. C. Harris, of Sheridan. The authorities at the Fort could easily have had correct information about me.

4th. I was arrested upon pretended information given to the authorities at the Fort by a letter written by a person at Big Horn, of no reputation — not a leading citizen, nor even a reputable citizen — and who has since confessed that he knew he was giving false information.

5th. The informer did not claim the usual reward of thirty dollars, nor any reward, which circumstance on the part of such a person should have put the authorities to inquiry before arresting me.

6th. The deserter, A. J. Heath, for whom it is pretended I was mistaken, was known to the informer and to the Fort authorities to have formerly been in the British army, from which he

deserted, and afterwards, in December, 1879, to have enlisted in the United States army, from which he deserted at Fort Laramie, Wyoming, July 14, 1881. I became twenty-one years old June 7, 1884. I never in my life, at school or in play, had any drill or practice at arms, nor served as a soldier in any regular or volunteer force, nor do I appear to have a soldierly bearing.

7th. The alleged deserter, Heath, enlisted December 26, 1879, and served in troop K Fifth United States Cavalry, of which Lieut-Colonel Charles C. Compton is an officer, and part of said regiment of cavalry was, at the time of my arrest and for six months or more previous, stationed at Fort McKinney. It was highly improbable that the deserter Heath should, under such circumstances, settle and buy land and invest money at Big Horn City, not many miles from the fort from which he deserted, and about a day's journey from Fort McKinney, where was stationed part of the very regiment from which he deserted.

8th. Lieut-Colonel Charles C. Compton, commanding at Fort McKinney, was informed on or before Feb. 26, 1885, by my attorney, Charles H. Burritt, Esq., a notary public of Buffalo, Johnson County, Wyoming, that he, said Burritt, had met me at Rock Creek, Wyoming, in the winter of 1883-1884, when I was in the employ of Weatherbee and Billings on their sheep ranch, and that said Weatherbee knew me at Dedham. On or before said date he was informed that I had a brother, Thomas G. Hatheway, residing at Missoula, Montana, in the employ of Eddy, Hammond & Co., of Missoula, and assistant manager of the Montana Improvement Company. Shortly after said date he knew of the existence of the affidavits of my uncle, Simon W. Hatheway, an attorney, practicing law in Boston, Mass., and of my mother, Helen S. Hatheway, corroborating the statements I had previously made to him; and on or before March 10 also certain other affidavits to which were attached letters written by me after my arrest and expected by the officers in whose custody I was, and one letter written before my arrest (the handwriting of all which letters was identified as mine), which affidavits fully corroborated my statements and proved that I could not be the person for whom it was pretended I was mistaken. The papers in my possession at the time of my arrest and taken from me by Colonel Compton — none of them were consistent with my being any other than Arthur Ernest Hatheway. These papers included letters from my mother and sister and my brothers Thomas, George and Henry, and my uncle S. W. Hatheway, all covering a period of nearly four years. One of these papers was a letter of recommendation written by Eddy, Hammond & Co., of Missoula, Montana, and given to me by them in Sept. 1882, at the end of nearly a year's employment.

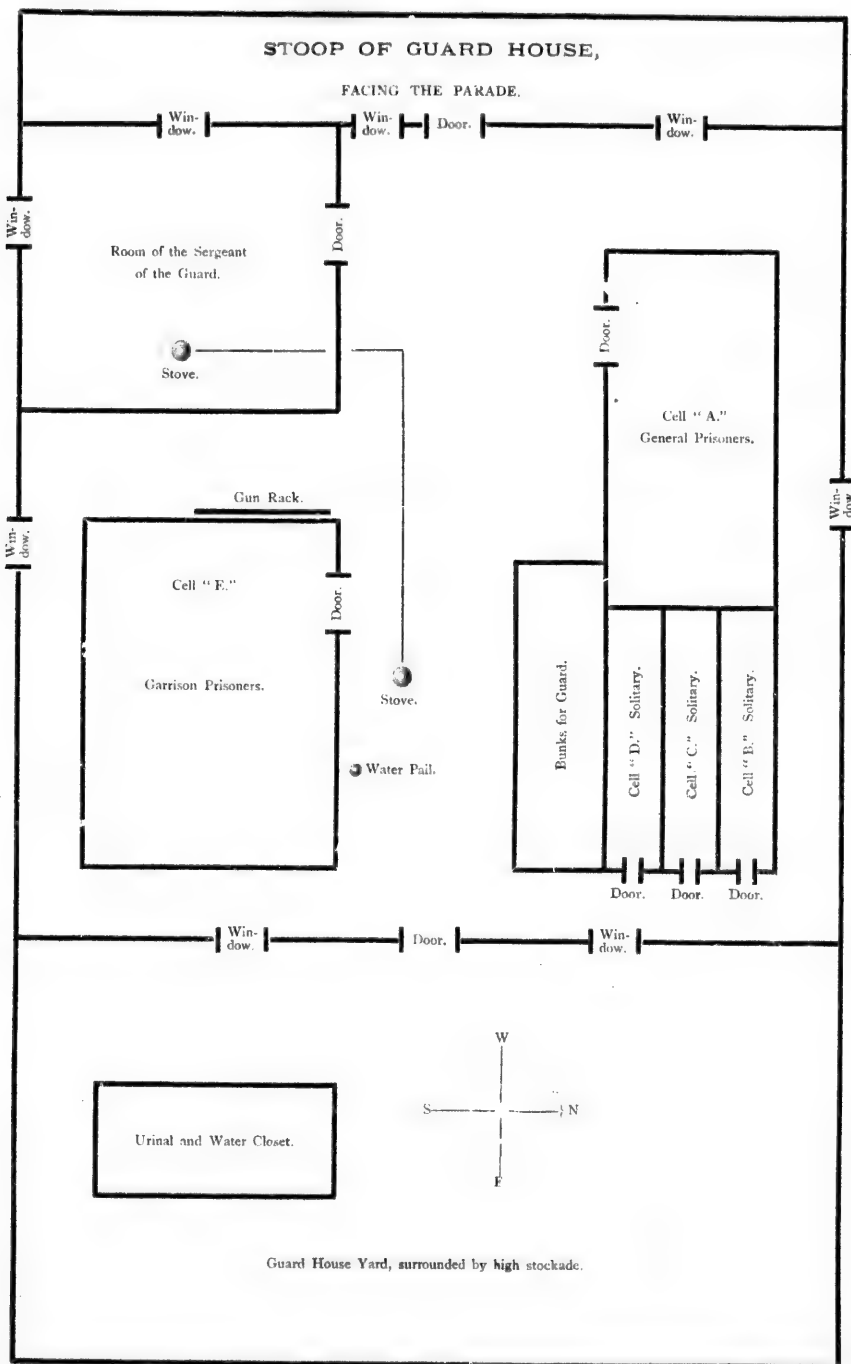
My money loss is not large, — being about three thousand dollars (\$3000) including counsel fees and all to date. My creditors swooped upon me as soon as they heard I was in prison, charged with being a horse thief and deserter, and my property had to be sold at a sacrifice to satisfy them in part. During my imprisonment, several persons owing me left for parts unknown. My legal expenses were necessarily large, especially at Boston, Dedham and St. John, as it took a great deal of time and search to find *disinterested* persons who could testify positively as to my whereabouts in December, 1879, and July, 1881. These expenses do not include the services of members of my family and many kind friends who left their own business and affairs to aid in procuring the evidence needed for my defence, and arranged their business so as to leave at a moment's notice to attend the court martial as witnesses. My health is nearly restored, except that I do not have my former energy and I seem to myself dispirited and discouraged; but that is partly due to the fact that the community still regard me with suspicion, as one who has been accused of horse-stealing.

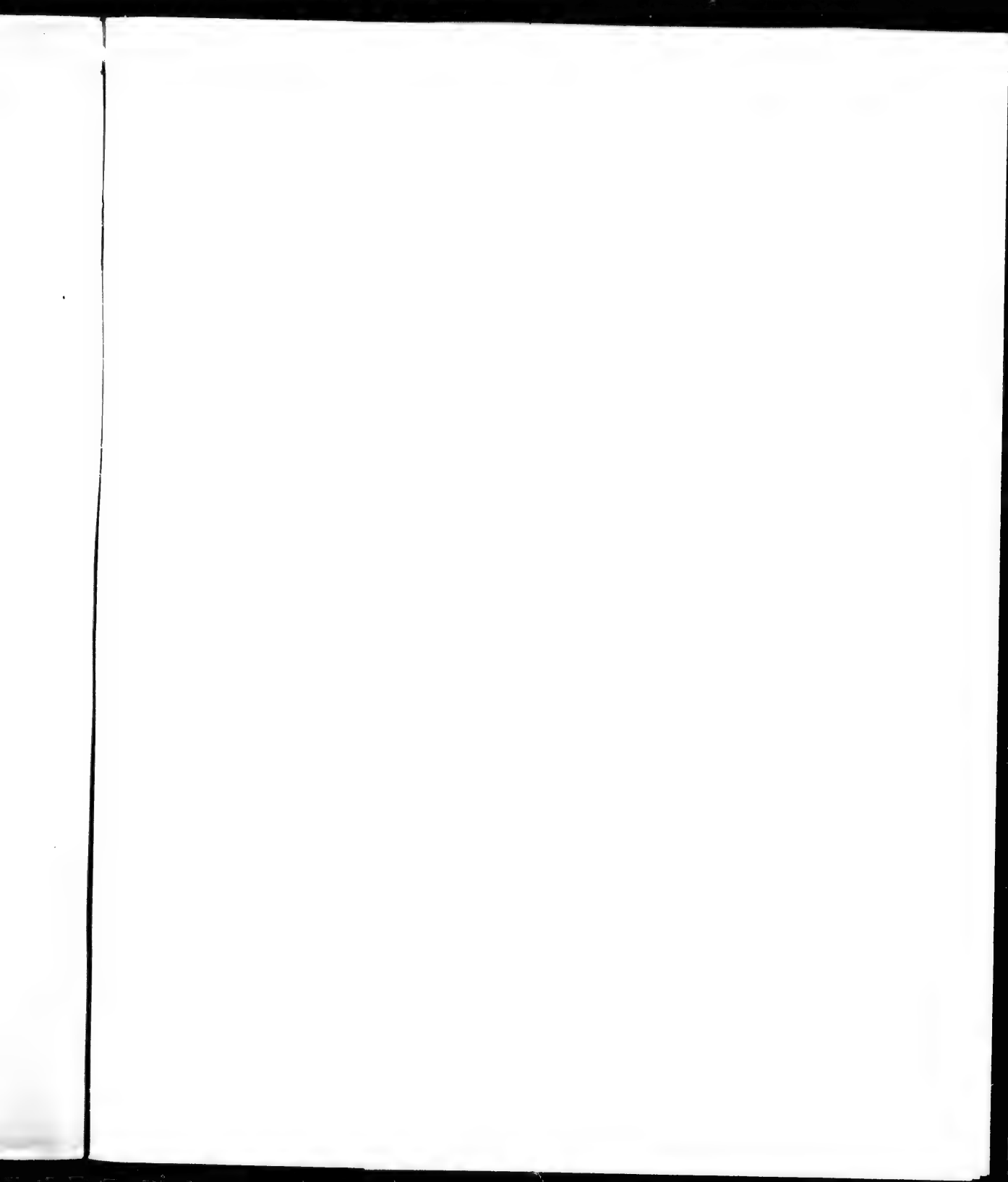
The money loss (and it took all I had and more, too), the injury to my health and my suffering in prison, severe as they all are, sink into insignificance compared with the great and irreparable injury done to me in this country, in accusing me of being a *horse-thief*. I am regarded as "an unconvicted horse-thief." Few people will believe that the United States military authorities would have brought so disgraceful a charge against me and arrested me on it and held me a prisoner *a whole month* unless it was true; and it is generally believed that I escaped conviction only because I had a smart lawyer.

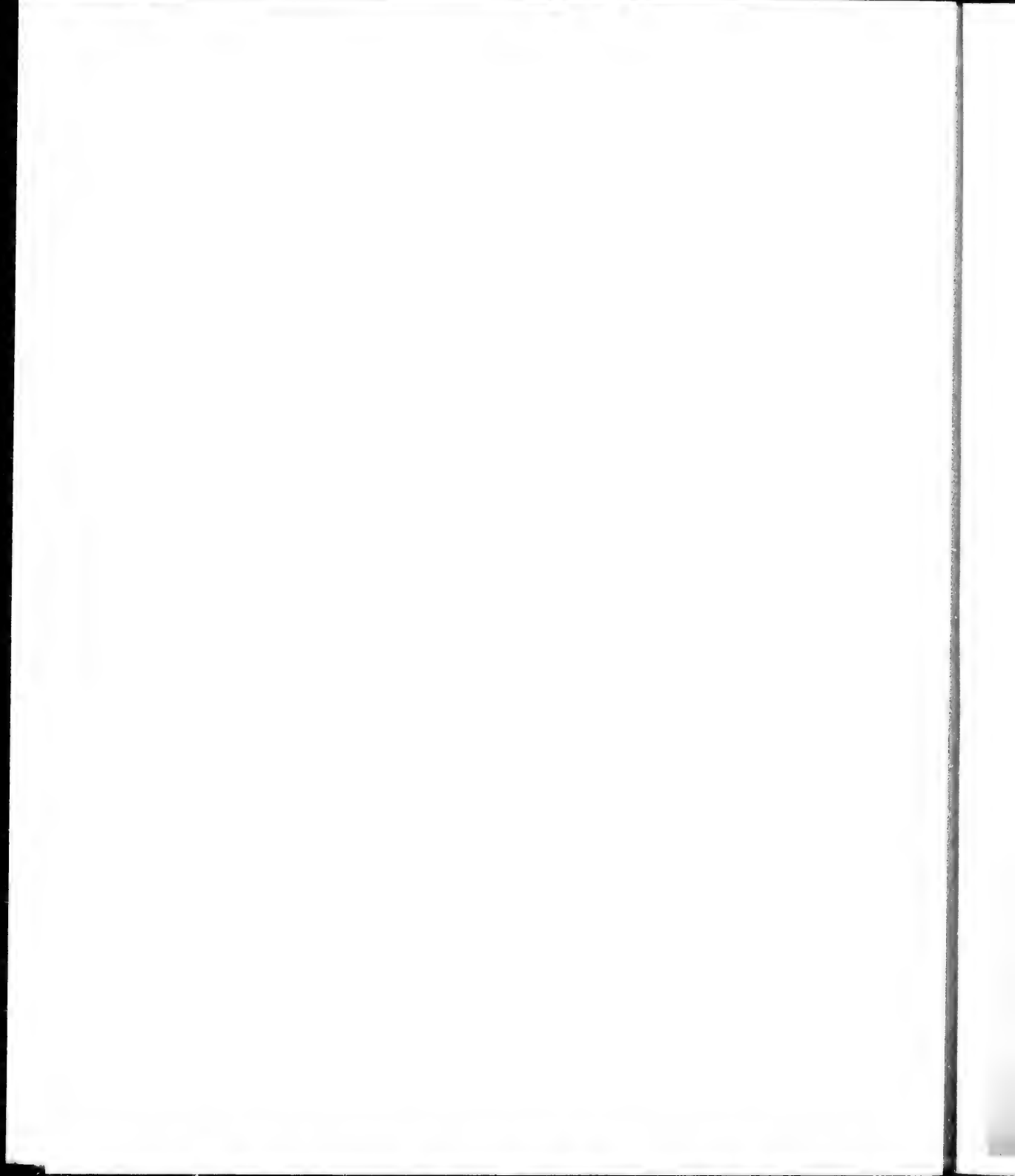
The findings of the court martial and the nature of the evidence were not as widely published as the infamous accusation was, and I am now too poor to pay for such publication of it as should be made. It will take me many years to live down this charge, and during all these years I must live under suspicion and work for less pay than others could get for the same services, and all because of this charge and the blunder, or worse, which caused me to be arrested and imprisoned for a whole month when I was utterly innocent.

ARTHUR ERNEST HATHEWAY,

By his Attorney, SIMON W. HATHEWAY, 34 School St., Boston.







THE CASE OF ARTHUR ERNEST HATHEWAY.

Supplemental Statement, Corrections and Additions.

- A. The following changes will make my statement conform to the certified copy of the record of the court-martial furnished by the War Department to my counsel, *and now before me*:—
For *Warren* read *Warn*; *Bellenger*, *Bellingger*; *Rheimer*, *Rihmer*; *Lunn*, *Lunan*, and *Alfred J. Heath*, omit *J. Becker* should be *Becker*, and *Lon Knight*, *Lois Knight*.
- B. On, or before March 10, 1885, the Fort authorities had received the affidavits of S. W. Hatheway, Helen S. Hatheway, Agnes A. Hatheway, F. W. Baker, Warren Morse, George W. Weatherbee, Benjamin Weatherbee, Anna M. Dean, Carrie E. Butman, Emma C. Geldert and S. Jennie Dean, and telegrams from Helen M. Wardroper, Helen S. Hatheway and George F. Hatheway, and letters from Thomas G. Hatheway and others, ascertaining beyond doubt that I was Arthur E. Hatheway, not Alfred Heath, never was enlisted, and, prior to November, 1881, had never been west of Massachusetts. Colonel Compton had also received the affidavit of my cousin Miss H. Carroll Bates, one of the teachers at St. Mary's school, Garden City, L. I., and a letter from Lieut. — Totten, informing him of Miss Bates' standing, and the reliability of her testimony, positively corroborating my statements.
- C. I was given to understand that I was honorably acquitted but that is not the record. The record is that *Alfred Heath was honorably acquitted*. And so my release was effected without the record showing that the authorities at the Fort had made a mistake, and without any record declaring me innocent. I was arraigned on the following charges and specifications:—
- “CHARGE I. DESERTION. *Specification*. In that Private Alfred Heath, Troop K, 5th Cavalry, having been duly enlisted in the military service of the United States, on December 26, 1879, did desert the said service at Fort Laramie, Wyoming, on July 14, 1881, and did remain so absent in desertion until he was apprehended at Big Horn, Wyoming, on February 27, 1885, and by reason of his said absence he was not amenable for trial in the meantime. This at Fort Laramie, Wyoming, on or about the date above specified.”
- “CHARGE II. THEFT. *Specification*. In that Private Alfred Heath, Troop K, 5th Cavalry, did steal knowingly, and wilfully misappropriate and apply to his own use and benefit one (1) cavalry horse valued at one hundred and twenty-five dollars (\$125), more or less, furnished and intended for the military service of the United States. This at or near Fort Laramie, Wyoming, on or about July 14, 1881.”
- To each charge and specification I pleaded “not guilty,” and entered the special plea that I was “not Alfred Heath, but Arthur E. Hatheway, and was never an enlisted man in the United States Army.” The proof was that Alfred Heath was guilty of each charge and specification, but that the accused was not Alfred Heath. The record of the court-martial's finding is that the court finds the accused Alfred Heath “not guilty” of each charge and specification “and does therefore acquit him, Private Alfred Heath, Troop K, 5th Cavalry.”
- Alfred Heath has certainly occasion to be grateful to me. My arrest and imprisonment with all the loss and suffering thereby occasioned to me and my family have secured him a record of acquittal.

April 6, 1885, Gen. O. O. Howard, Brigadier-General, Commanding the Department of the Platte, at Omaha, Nebraska, his headquarters, approved "the proceedings, findings and acquittal," and ordered "Private Heath will be released from confinement." I had been at liberty since March 23, 1885, on which day the court-martial having refused to summon the witnesses asked for by my counsel, I declined to testify in my own behalf and the proceedings were closed.

The form of the record may be necessary under the peculiar constitution of courts-martial, but that does not help me.

D. The testimony before the court-martial showed that the man for whom I was arrested was "a neat, well-drilled soldier, a short, thick-set, full-blooded Englishman, red-cheeked, with very dark, brownish-red hair, big nose, oval forehead, black moustache, and marked English accent, shorter than I by several inches and several years older than I, and considerably bow-legged, with a bunion and scar on left foot," and that the only points of resemblance, if any, between us, are that our shoulders are sloping and the head carried a little to the left. My hair is brown to mud-color, my moustache not black, nose small, forehead flat, prominent over the temples. I am not thick-set, have not red cheeks, have no English accent and no tendency to bow-legs, and I never drilled as a soldier or volunteer.

E. The first letter pretending to inform the authorities that I was a deserter, was written January 29, 1885. This was answered and the reply to the answer was written Feb. 2, 1885. In it Sheriff is spelled *Shearf*, find *finde*, and hotel *hotell*, and the writer, having knowledge of the offered reward makes no claim for it, but tells the authorities "*I don't think there will be any doubt of you getting him, because there is property here that belongs to him.*" Eighteen days later I was arrested.

F. I have stated that I was in peril of my life. For several days I was in charge of Sergeant Kitchen and two common soldiers armed with loaded guns, ordered to shoot me if I made the slightest movement to escape, and to them, doubtless, I appeared what Sergeant Kitchen testified at the court-martial, he *then* believed me to be, a desperado, deserter, horse-thief, and impudent impostor trying to brazen it out that I was innocent.

If either of these men had at any time, night or day, conceived the idea that I was making a motion to escape he would have shot me and been justified by his orders. My life depended on their understanding what my movements from time to time meant. An impulsive movement of my body, an involuntary or heedless motion might have been the signal to either of them to shoot. I was indeed in peril of my life.

G. The person who misled the authorities to arrest me is worthless in a double sense, and if answerable to me in damages for his misconduct, has no property to pay the judgment. It is doubtful if he could be made to answer civilly, and efforts being made by my attorney, Charles H. Burritt, Esq., to have the offence punished as criminal have not yet been successful.

The officers and soldiers at the Fort justify under their orders, so that my only recourse is to the United States Government, which will, I know, desire to do what is right, and to so do it as to give new assurance to all intending settlers in the great West, that their rights to life, liberty, and the pursuit of happiness are secure, whatever their nationality, and that if for a moment by any accident or mistake the security fails and they suffer an injury at the hand of the Government's agents, the compensation will be swift, sure and ample.

I append the affidavit of Charles H. Burritt, Esq., of Buffalo, Wyoming, the attorney who defended me before the court-martial. But for his aid generously rendered without requiring payment or guarantee in advance, where would I now be? *In all probability in Fort Leavenworth, under a ten year's sentence*, and my friends vainly endeavoring to effect my release.

This gentleman had met me once and for only a short time; but he, without hesitation, took up my cause and defended me to the end. After the case was over, he was paid in full his moderate bill, some months ago, partly in cash, and partly in notes guaranteed by my mother and sister; but gratitude for his noble and chivalrous conduct remains a debt I will ever owe him. May all men in like distress find such a lawyer.

ARTHUR E. HATHIEWAY.

By SIMON W. HATHIEWAY, *his Attorney*,

34 SCHOOL STREET, BOSTON, MASS.

Sept. 16, 1885.

(EXHIBIT "A.")

HEADQUARTERS DEPARTMENT OF THE PLATTE.

OMAHA, NEBRASKA, November 1, 1884.

SPECIAL ORDERS, }
No. 96. }

(EXTRACT.)

7. A general Court-Martial is appointed to meet at Fort McKinney, Wyoming, on the 17th day of November, 1884, or as soon thereafter as practicable, for the trial of such prisoners as may be brought before it.

DETAIL FOR THE COURT.

1. Captain Emil Adam, 5th Cavalry.
2. Captain William C. Forbush, 5th Cavalry.
3. Captain Ebenezer W. Stone, 21st Infantry.
4. Captain Henry S. Turrill, Medical Department.
5. Captain William I. Reed, 7th Infantry.
6. 1st Lieutenant Charles H. Rockwell, 5th Cavalry.
7. 1st Lieutenant George H. Paddock, 5th Cavalry.
8. 1st Lieutenant Francis E. Eltonhead, 21st Infantry.
9. 1st Lieutenant Edwin P. Andrus, 5th Cavalry.
10. 1st Lieutenant Francis J. Patten, 21st Infantry.
11. 1st Lieutenant Homer W. Wheeler, 5th Cavalry.
- *12. 1st Lieutenant Ebenezer Swift, Jr., Adjutant 5th Cavalry.
13. 2d Lieutenant Charles M. Truitt, 21st Infantry.
14. 1st. Lieutenant Wittich, 21st Infantry, Judge Advocate.

The travel directed is necessary for the public service.

By order of BRIGADIER GENERAL HOWARD.

A true copy,

(Sig.) J. H. TAYLOR, *Assistant Adjutant General.*

JOHN B. BELLINGER, *2d Lieutenant, 5th Cavalry, Judge Advocate.*

HEADQUARTERS DEPARTMENT OF THE PLATTE.

OMAHA, NEBRASKA, January 5, 1885.

SPECIAL ORDERS, }
No. 2. }

(EXTRACT.)

3. 1st Lieutenant Willis Wittich, 21st Infantry, is relieved from duty as Judge Advocate of the General Court-Martial convened at Fort McKinney, Wyoming, by Paragraph 7, Special Orders, No. 96, series 1884, from these Headquarters.

By order of BRIGADIER GENERAL HOWARD.

A true copy,

(Sig.) J. H. TAYLOR, *Assistant Adjutant General.*

JOHN B. BELLINGER, *2d Lieutenant, 5th Cavalry, Judge Advocate.*

* NOTE BY S. W. HATHEWAY.—At the opening of the Court-Martial the prisoner objected to 1st Lieutenant Ebenezer Swift, Jr., Adjutant 5th Cavalry, sitting as a member of the Court, on the ground that he was a witness for the prosecution. The objection was sustained, and Lieutenant Swift did not act as a Judge but testified as a witness for the prosecution.

HEADQUARTERS DEPARTMENT OF THE PLATTE.

OMAHA, NEBRASKA, January 5, 1885.

SPECIAL ORDERS, }
No. 2. }

(EXTRACT.)

4. 2d Lieutenant John B. Bellinger, 5th Cavalry, is detailed as Judge Advocate of the General Court-Martial convened at Fort McKinney, Wyoming, by Paragraph 7, Special Orders, No. 96, series 1884, from these Headquarters.

By order of BRIGADIER GENERAL HOWARD.

A true copy,

(Sig.) J. H. TAYLOR, *Assistant Adjutant General.*

JOHN B. BELLINGER, *2d Lieutenant, 1st Cavalry, Judge Advocate.*

HEADQUARTERS DEPARTMENT OF THE PLATTE.

OMAHA, NEBRASKA, January 14, 1885.

SPECIAL ORDERS, }
No. 4. }

(EXTRACT.)

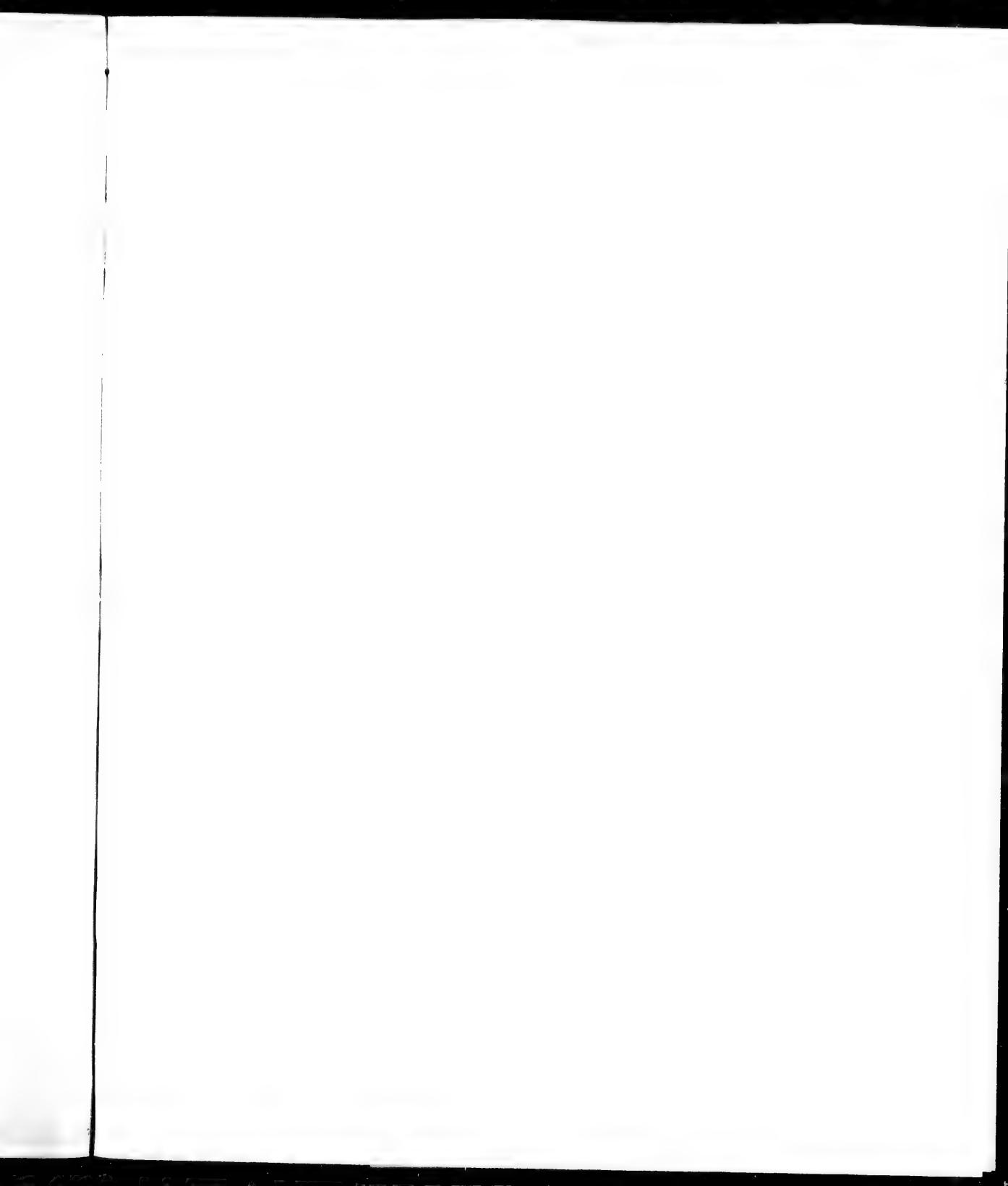
3. Captain William I. Reed, 7th Infantry, 1st Lieutenant Francis E. Eltonhead, 21st Infantry, 1st Lieutenant Homer W. Wheeler, 5th Cavalry, and 2d Lieutenant Charles M. Truitt, 21st Infantry, are relieved as members of the General Court-Martial, convened at Fort McKinney, Wyoming, by Paragraph 7, Special Orders, No. 96, Series 1884, from these Headquarters.

By order of BRIGADIER GENERAL HOWARD.

A true copy,

(Sig.) J. H. TAYLOR, *Assistant Adjutant General.*

JOHN B. BELLINGER, *2d Lieutenant, 5th Cavalry, Judge Advocate.*



(EXHIBIT "B.")

CHARGES AND SPECIFICATIONS

PREFERRED AGAINST

PRIVATE ALFRED HEATH, Troop "K," 5th Cavalry,

Charge I. DESERTION.

SPECIFICATION.—In that Private Alfred Heath, Troop "K," 5th Cavalry, having been duly enlisted in the military service of the United States on December 26th, 1879, did desert the said service at Fort Laramie, Wyoming, on July 14, 1881, and did remain so absent in desertion until he was apprehended at Big Horn, Wyoming, on February 21st, 1885, and by reason of his said absence he was not amenable for trial in the mean time.

This at Fort Laramie, Wyoming, and Big Horn, Wyoming, on or about the dates above specified.

Charge II. THEFT.

SPECIFICATION.—In that Private Alfred Heath, Troop "K," 5th Cavalry, did steal knowingly and wilfully misappropriate and apply to his own use and benefit, one (1) cavalry horse, valued at one hundred and twenty-five dollars (\$125) more or less, furnished and intended for the military service of the United States.

This at or near Fort Laramie, Wyoming, on or about July 14th, 1881.

(Sig.) EBEN. SWIFT, *1st Lieutenant, and Adjutant 5th U. S. Cavalry.*

A true copy,

JOHN B. BELLINGER, *2d Lieutenant, 5th Cavalry, Judge Advocate.*

UNITED STATES OF AMERICA.

TERRITORY OF WYOMING, }
COUNTY OF JOHNSON. } ss.

Charles H. Burritt, of Buffalo, Johnson County, Wyoming Territory, of lawful age, being first duly sworn, upon his oath deposes and says as follows : —

I am an attorney-at-law, and have resided at Buffalo aforesaid, continuously since September, 1883, and have been there engaged in the practice of my profession. I was employed on February 23, 1885, by Arthur Ernest Hatheway, to conduct his defense before a general court-martial upon the charges contained in the exhibits hereto attached, marked "A" and "B." Said A. E. Hatheway came into my office in custody of a Soldier, and stated to me that he was under arrest charged with desertion, and desired me to visit him at Fort McKinney. I at once recognized him as a young man that I had seen in the winter of 1883-4 at the Thornburgh House in Laramie City, Wyoming, while I was a transient guest of said house, and in company with one Wetherbee, of the firm of Wetherbee & Billings, sheep ranchers, near said Laramie City. Mr. A. E. Hatheway informed me then that he was a British subject, had never been in the United States Army or any other. I advised him to make the same assertion at Fort McKinney on his arrival there, and I would take steps at once to have him released. My conversation at this time with my client was limited as the guard remained continuously in the room.

On Wednesday, February 25th, 1885, I went to Fort McKinney to have an interview with my client. I made application to the Sergeant of the Guard at the Guard House for such an interview and was informed by him that I was not to be permitted to see him, that my client was in close confinement and the orders were very strict not to allow any communication with him, and I was referred to Lieutenant Paddock, Officer of the Day. I at once went to Lieutenant Paddock's quarters and notified him that I was counsel for Hatheway and desired an interview with him. Lieutenant Paddock told me that Colonel Compton, the Post Commander had given him strict orders not to allow anyone to communicate with that man, and advised me to apply to Colonel Compton himself, when I would no doubt receive the required permission. Lieutenant Paddock then asked me, "do you think that this man is a deserter?" To which I replied, "I have had very little talk with him yet, but I am confident that I have seen this same man in company with Mr. Wetherbee of Laramie City, and at the Thornburgh House in company with men of such character as to preclude the idea that he is a deserter, and I know that Mr. Wetherbee lived near Boston, Mass., and is a man well connected there. I cannot think that Hatheway is a deserter."

I then went in search of Colonel Compton, calling at his office and his house. I met him near the garrison stables, and upon my representation that I was counsel for Hatheway, Colonel Compton accompanied me to the Guard House and gave verbal orders to the Sergeant of the Guard to allow me an interview with "that man Heath" in the office of the Sergeant of the Guard, and that I should not be interrupted or disturbed by anyone. He then requested me to call at his house when I was at liberty.

I was then admitted to the Sergeant's Office in the Guard House and the Sergeant retired to another part of the Guard House and returned with my client. Mr. Hatheway then stated to me who he was, and as near as he understood the charges against him. He complained to me that he was closely confined, had no bedding because he had refused to sign the name of Heath and had been grossly insulted by the Officer of the Day and others. I took the names and addresses of the relatives of Hatheway and the names of persons in whose employ he had been, and then went to the residence of Colonel Compton, where I had a long interview with him. I told him as I had told Lieut. Paddock that I did not believe he was a deserter and gave him the names and addresses of responsible parties in Missoula, Montana, Boston and Dedham, Mass., and St. John, New Brunswick. Colonel Compton promised to investigate the matter. I then requested that Hatheway be furnished with necessary bedding and be treated with the consideration due to a citizen until such time at least, as he should be proved to be an impostor. I returned to Buffalo and at once communicated with Eddy Hammond & Co., Missoula, Montana, in whose employ Hatheway had represented to me that he had been. I received in answer to my letter to Eddy Hammond & Co., a telegram from Eddy Hammond in which the assertion was made that Arthur Ernest Hatheway was no deserter. This telegram I at once showed to Colonel C. C. Compton, Lieut. E. Swift, Jr., Post Adjutant, Lieutenant Bellingier, Judge Advocate and others. I received early in March, 1885, and prior to the 10th, some affidavits from the family and others, clearly showing that there was a mistake in the arrest.

Notwithstanding these convincing facts, Hatheway was not released until Monday, March 23, 1885, at which time the Court-Martial having adjourned *sine die*, I was informed by Charles C. Compton, Post Commandant, that Captain Adams, President of the Court-Martial had notified him unofficially that the Court-Martial had no further use for my client, and that he was at liberty to go.

The special plea entered by me was substantially that my client was not Alfred Heath and that he was Arthur E. Hatheway and had never been an enlisted man in the United States Army. The proof was overwhelming and undenied that Alfred Heath was a deserter and a horse-thief. It was also clearly established that my client's special plea was true, and notwithstanding this, the Court-Martial as I learned with surprise when the verdict was made public, completely ignored the special plea and contrary to the evidence rendered a verdict that Alfred Heath was "Not Guilty."

I was present at the Court-Martial at the examination of the Saddler from Fort Niobrara, and heard and witnessed the whole proceeding narrated in the published statement of Arthur Ernest Hatheway on page two. The statements of that matter are true of my own knowledge. I immediately made written memoranda of the same. Lieutenant Paddock said he thought he had detected a scar, and at my request Hatheway again removed his boot and sock and Lieutenant Paddock looked closely but did not say whether he saw a scar or not. My client said to Lieutenant Paddock in an ordinary tone of voice, still holding his sock in his hand "Are you satisfied?" At which Lieutenant Paddock turned toward my client and shaking his fist in his face said in a rude, insulting and abusive manner, "Don't give me none of your lip," and immediately made a motion that the court be cleared and that Hatheway be confined in the Guard House.

No notice was taken of Lieutenant Paddock's motion, and the business then proceeded.

I have carefully read the published statement of Arthur Ernest Hatheway and the same I believe to be true. Many of the material facts stated therein are true, as I know from my own knowledge, and the rest were communicated to me during the trial, as they occurred, by my client and enlisted men in the garrison, and many of them by citizens.

It was no secret in the post that the trial of Hatheway was proceeded with for the express and only purpose of exonerating the officers who had been instrumental in causing the arrest. The man Trumpeter Warren, had been the most intimate associate of Alfred Heath, and was better able to determine the fact as to whether my client was or was not Heath than any other man obtainable, and Trumpeter Warren asserted in my presence and that of one of the officers of the court, that my client was not Heath. Lieutenant Bellinger not only knew this but also refused to call him as a witness. I am well acquainted with Big Horn, and its resident citizens, and know the reputation of the community for peace and good order. It is not "a resort for the hardest set of citizens of Johnson County," and does not nor has it had during my residence in Johnson County any such reputation, and all statements to the contrary are base and malicious falsehoods. The town is one of unusual good order, and the citizens are now and always have been since the county was organized, a peaceable, quiet, and law abiding community as the records of our courts will show.

The trial of Mr. Hatheway was a farce, and an imposition, and his treatment at Fort McKinney during the first part of his confinement, as I am told by enlisted men who served as guards, was cruel, abusive and outrageous, and I have every reason to believe and do believe that had we been located near to a Judge of the United States Courts the arrest would never have taken place, and that the arrest and trial of Mr. Hatheway by the United States Army Tribunals was uncalled for, and with the exercise of the most ordinary judgment could and would have been avoided. I assert as my fixed conviction from my knowledge of the case.

CHARLES H. BURRITT.

On this 9th day of September, 1885, before me, N. L. Andrews, a United States Commissioner in and for the Second Judicial District of Wyoming, personally came Charles H. Burritt, and subscribed the foregoing statement in my presence, and made solemn oath that the same is true as therein stated.

I further certify that I am well acquainted with Charles H. Burritt, the above subscriber, and that he is a person of respectability, and to whose statements full credence should be given.

Witness my hand and Official Seal the day and year last above written at Buffalo, Johnson County, Wyoming Territory.



N. L. ANDREWS, *United States Commissioner,*
2d Judicial District of Wyoming Territory.